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JUDGE ROBERTS: BUSINESS AS USUAL

BY ALEXANDER COCKBURN AND JEFFREY ST. CLAIR

Unless they discover John Roberts dropped acid at Harvard or had been funneling insider stock tips to his wife, it looks as though he's a shoo-in for confirmation as a member of the U.S. Supreme court. In his last job in the private sector, as a partner at Hogan & Hartson, an elite DC law firm, his gross income in 2003 was $1,044,399.54, so his gamble in accepting a seat on the federal Appeals court on the DC circuit has certainly paid off. Already he's being talked up as maybe the next chief justice, replacing William Rehnquist, the justice he formerly clerked for.

Both the liberals and the Christian right had amassed colossal war chests of around $20 million, expecting a convulsive confirmation hearing stretching far into the fall. They'll be hard put to spend the money, since Roberts's footprints have been purposively indistinct almost since he left the cradle.

His highest profile legal opinion came when he was Solicitor General Ken Starr's deputy back in Bush Sr.'s term. Roberts wrote a government brief arguing Roe v. Wade had been wrongly decided and should be overruled. Always prudent, he later published a law review article in 1994, with a footnote that said: "In the interest of full disclosure, the author would like to point out that as Deputy Solicitor General for a portion of the 1992-93 term, he was involved in many of the cases discussed below. In the interest of even fuller disclosure,

(**Roberts** *continued on page 2)*

Remember the Leadbelly Rip Off? Try This

The Story of SoundExchange

BY FRED WILHELMS

Every time you hear a song that streamed to you off a website or into your car by satellite radio, an organization called SoundExchange, granted a monopoly by the government, collects a fee, supposedly on behalf of the composer and performers. But the whole history of music has been one of performers being bilked and ripped off. Is SoundExchange an exception in the new digital world? Fred Wilhelms, a Nashville-based attorney, has devoted long years defending the rights of recording artists, many of whom see no financial returns, even as the record companies and the trade associations supposedly protecting their interests, scoop up the money. Here's what Wilhelms has found out. AC/JSC

A month ago, Mary Beth Peters, of the Register of Copyrights at the Library of Congress, testified before the Senate Judiciary Committee. During her presentation, she caused some ripples in the intellectual property and new technology camps by proposing a single license fee to cover all possible commercial interests dissemination of music over the Internet.

This would collapse the separate (and cumbersome) structures now in place to deal with performance rights, mechanical rights, and reproduction rights into a single scheme, with a single entity responsible for collection of the fees from the Internet users and distribution of those fees to the copyright holders and the artists.

The idea represents novel thinking from Peters, which is reason enough to note it. The Register's office has rarely been in the forefront of innovative thought.

Of greater concern to me is an apparent willingness to grant the fee collection and distribution franchise to SoundExchange because this Washington-based outfit is already providing those functions for Internet and satellite radio performance license fees. I am going to go against this tide and suggest extreme caution before jumping on the SoundExchange bandwagon. I am urging a pause for thought because SoundExchange is already screwing up in its primary function of getting artists paid. Unless the folks at SoundExchange start getting things right with their current obligations, I don't suggest that anyone give them a bigger franchise. Here's why.

The regulatory game was rigged in 1995 to give SoundExchange a monopoly as a collection and distribution entity for webcasting and satellite licensing. When that happened, it no longer became necessary for an artist-claimant to designate a collection agent. SoundExchange became their collector, automatically. That meant SoundExchange could, and did, collect money for people who had no idea who or what SoundExchange was, or that SoundExchange was collecting money for them. SoundExchange moved briskly ahead, accepting license fees and playlists from all sorts and sizes of webcasters. It opened accounts for the artists who had their recordings played on the licensed services and started depositing money into

(**SoundExchange** *continued on page 6)*

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(**Roberts** *continued from page 1*)

he would also like to point out that his views as a commentator on those cases do not necessarily reflect his views as an advocate for his former client, the United States."

Hearings for Sandra Day O'Connor's replacement were scheduled to be the big late-summer spectacular, with blood in the water from the outset. The cable companies were licking their lips at a surge in revenues and journalists pumped for days of high-voltage action. Karl Rove was no doubt hoping that a savage confirmation battle would drive the Plame scandal off the front pages.

So there's an unmistakable sense of anti-climax. The *Weekly Standard* crowd, to judge by executive editor Fred Barnes' column, reckons it's an okay nomination but that Bush could have done better, with some zealot like J. Michael Luttig from the Fourth Circuit or Edith Jones from the Fifth Circuit, who has said straight out she wants to see Roe v. Wade overturned.

There's similar, muted disappointment from Sandra Day O'Connor and, no doubt, from the First Lady, both of whom had said they wanted to see a woman replace O'Connor (presumptively one who would not overturn Roe v. Wade.)

The libertarians rooted for Michael McConnell, now on the federal appeals bench on the Tenth circuit. But McConnell doomed himself in 2001, when he wrote a law review article disagreeing with the U.S. Supreme Court ruling on the Florida challenge, not something that the Bush White House is likely to forget. Roberts, then a partner at Hogan & Hartson, was providing crucial legal and strategic advice to Jeb Bush on how to run the recount.

What is one to make of Roberts? He's a Fifties-style Midwesterner, son of a Bethlehem steel executive, churchy and prudish. Already at Harvard he was gorging himself on chocolate chip ice cream and gulping down bottles of Pepto-Bismol while quoting Samuel Johnson. This was in '73 and '74 when Pepto-Bismol was not the elixir of preference among the young and Dr Johnson not your average law school student's bedside reading. Roberts is fifty but he seems a lot older, and although people are reckoning that he could still be on the bench in 2035, those bottled-up Midwesterners have a tendency to swerve prematurely into the graveyard.

The prime lobby that should feel gratified by his nomination is of course Big Business, the protection of whose interests has been Roberts' chief concern throughout his career, and the protection of whose interests has always been the prime concern of the U.S. Supreme Court. Listen to the assessment of Boalt law professor and torture-defender, John Yoo: "Roberts is the type of person that business conservatives and judicial-restraint conservatives will like, but the social conservatives may not like. What the social conservatives want is someone who will overturn Roe v. Wade and change the court's direction on privacy. But he represents the Washington establishment. These Washington establishment people are not revolutionaries, and they're not out to change constitutional law."

Already some seasoned court watchers are saying that Roberts should not be teamed up with the court's two right-wing ultras, Scalia and Thomas, but with the corporate-oriented, pro-big government "center", Kennedy and Breyer. Remember that in the court's last two terrible decisions, on medical marijuana and eminent domain, Kennedy and Breyer were part of the majority that ruled against the former and in favor of business developers and the local governments that serve their interests.

Roberts' record may be opaque when it comes to Roe v. Wade but on corporate issues it's as clear as daylight. When he was deputy solicitor general he ran the government's case when the Supreme Court issued what was probably the most devastating ruling on environmental issues in the last generation. This was the Lujan v. National Wildlife Federation decision in 1990. It tightly restricted the doctrine of "standing," which gives environmentalists the right to challenge destructive practices on federal lands.

It would be hard for Roberts to argue that he was just doing his job as a government lawyer. Returning to private practice from the Solicitor General's office, he was swiftly picked as counsel by the National Mining Association, which had noted his victory in the Lujan decision. On behalf of the coal companies, Roberts wrote a legal brief arguing that local citizens in West Virginia had no right to bring lawsuits challenging the most destructive form of mining ever devised, mountain-top removal. Later, going through confirmation to the Appeals Court, Roberts was asked what had been his most significant cases in private practice. In his response he proudly highlighted his work for the coal companies.

Then, only months after his appointment to the federal Appeals court Roberts once again tried to promote corporate destruction in the Rancho Viejo v. Norton case, where the federal Fish and Wildlife Service had made a ruling in favor of the endangered arroyo toad and against a California developer. The DC circuit court ruled 2-1 in favor of the toad, with Roberts as the minority vote. He had argued, vainly, that there was no federal interest because the toad, "for reasons of its own, lives its entire life in California."

In harmony with his pro-corporate tilt, Roberts' wife, Jane Sullivan Roberts, is a very big-time corporate lawyer, specializing in the global communications sector. She works in a Democratic law firm, but we can safely assume this does not betoken acrimony over the Roberts' morning ingestion of eggs and bacon, grits, hash browns, eased down by gulps of Pepto-Bismol. They both serve the same corporate masters. CP

Editors
Alexander Cockburn
Jeffrey St. Clair

Business
Becky Grant

Design
Deborah Thomas

Counselor
Ben Sonnenberg

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CounterPunch
PO Box 228
Petrolia, CA 95558
1-800-840-3683 (phone)
counterpunch@counterpunch.org
www.counterpunch.org

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Swiftboat Vets March to Bush's Drum on Iran

By Trish Schuh

Despite receiving an ugly bruise in Uzbekistan, the Central Intelligence Agency and its non-governmental organization regime-change industry hope to stage another cardboard coup in Iran.

Tasked by the Bush administration with sending that message from America to Tehran, and "winning hearts and minds" is author and "Swiftboat Veterans for Truth" member Jerome Corsi. On May 16, Corsi's NGO, the Iran Freedom Foundation (IFF), inaugurated a 12-day "Iran Freedom Walk" from Philadelphia's Liberty Bell to Washington, DC.

Dipping two fingers in red paint, Corsi waved a peace sign in solidarity "with the blood of oppressed Iranians" and called on "the spirit of Mahatma Gandhi and Martin Luther King". He declared, "I love the Iranian people. America does not hate the Persian people. We love the Persian people. We want peace and we love the Persian people." Corsi's voice then dropped to a whisper; "We stand here today and we pray in the name of the gods. I embrace Jesus Christ as my savior - and we also pray in the name of Allah, Zoroaster and the B'hai."

But Corsi has expressed very different opinions on Islam in the past. According to his own postings on FreeRepublic.com, on November 18, 2001 Corsi remarked of Arabs: "Ragheads are boy-bumpers [sodomizers] as clearly as they are women haters - it all goes together."

Using the incendiary style he perfected for "Swiftboat veteran" ads, Corsi declares, "Islam is a peaceful religion as long as the women are beaten, the boys buggered and the infidels killed." Comparing Islam to a disease, he added, "How's this for an analogy? The Koran is simply the 'software' for producing deviant cancer cell political behavior and violence in human beings' and Islam is like a virus."

Surrounding Corsi at his walk were three dozen Los Angeles Iranian dissidents and pro-monarchists interviewed by an Orthodox Jewish journalist and by the CIA-backed Voice of America and Radio Free Europe/Radio Farda. The *Los Angeles Times* of March 20 revealed that "Tehrangeles" has become a crucial recruiting ground for Iranian expatriates who gather information for the US intelligence community.

According to the March 4 *Los Angeles Times*, the US currently spends $14.7 million a year on Farsi "opposition broadcasts" into Iran.

Los Angeles Farsi radio station KRSI noted the similarity between current US efforts and the CIA's 1953 overthrow of Iran's democratically elected premier Mohammed Mossadeq. When asked if he was CIA-affiliated, Corsi replied: "No, I'm not. I've never held a government position, never had any government position at all. I've been in universities. I'm an author. I'm in business. I'm not related to the CIA. It's just not true."

"We stand here today and we pray in the name of the gods. I embrace Jesus Christ as my savior - and we also pray in the name of Allah, Zoroaster and the B'hai."

Corsi's publisher, Cumberland House, states in his biography that Corsi's top secret clearance came from the government's US Agency for International Development. USAID has often served as a conduit for American covert operations funding, under humanitarian auspices.

This writer asked Corsi about the Iran Freedom Foundation's funding. He said the money came from sales of his book *Atomic Iran* and from private donations, adding that the IFF would apply for government funding when it became available.

That funding may be on the way. In a May 5 *Financial Times* article, "US offers grants to help oppose clerics", Guy Dinsmore reported that lawmakers demanded a bill aimed at overthrowing the Iranian government be increased to $50 million. This did not include the millions of dollars provided by the State Department's Middle East Partnership Initiative.

Such "soft power" opposition activities are escalating. The May 29 *New York Times* quoted Nicholas Burns, under secretary of state for political affairs, as saying the Bush team was "taking a page from the playbook" of colored revolutions where US-funded "pro-democracy" NGOs helped nonviolently overthrow noncompliant governments.

The IFF lists several such activities on its website. Corsi's book, *Atomic Iran*, is being translated into Farsi for clandestine distribution in Iran; there is an online petition targeting the mullahs; IFF university associations are mobilizing college students; and a national speakers bureau to educate Americans on Iranian atrocities has been deployed.

The IFF is also filming a documentary and has begun running TV ads entitled; "An Atomic 9-11: When Evil is Appeased", accusing Iran of plans to detonate a 150 kiloton nuclear bomb in New York City.

The IFF's efforts are supplemented by an array of related sister organizations, such as Regime Change Iran, Alliance for Democracy in Iran, Iran of Tomorrow Movement, the Iranian Opposition Council, and The 70 Million People of Iran, which are organizing an election for a secular interim government in exile "ready to assume Iran's governmental functions". The group has also issued an ultimatum letter to world leaders, demanding they void all contracts with Iran. (Halliburton contracts in Iran were not mentioned).

Corsi's IFF has also promoted the Free Iran Project, an enterprise sponsored by Reagan administration policy consultant Jack Wheeler. (In January 2005, Wheeler advocated that President Bush use nuclear weapons to destroy Mecca if America is hit by another terrorist attack. Wheeler bragged on his website "To The Point" that Osama Bin Laden is "playing poker with a Texas cowboy holding all the nuclear aces.")

As early as 2003, Reuters printed allegations that the US had infiltrated several million dollars into the country to bribe officials and pay protesters. *The Economist* for June 13, 2003 headlined; "More unrest on the streets of Tehran. Is America pulling the strings?"

America is indeed pulling strings, with Israeli assistance. The former head of Mossad's foreign intelligence division, Uzi

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Arad, told Worldnetdaily.com: "Support of Iranian opposition by the international community could be an effective way to handle the current regime" and that "its stability can be greatly reduced by the people themselves."

Israel's Student Solidarity Movement and The Jewish Agency recently staged protests at Iranian embassies worldwide. The Israeli newspaper *Ha'aretz* reported AIPAC [American Israel Political Action Committee] as "spurring Congress to pass a sanctions bill against Iran". AIPAC is also pressuring the US to support the Iranian Mujahideen-e-Khalq (MEK) for use against Iran's mullahs.

MEK has been legally designated a terrorist organization since 1997 for killing US citizens, for its role in the 1979 seizure of the US Embassy in Tehran and for attacking coalition troops in Iraq. Human Rights Watch recently condemned them for use of torture, bombings and assassinations. Nevertheless, 150 congressmen have petitioned Bush to remove them from the terrorism list, and several lawmakers spoke at their 2005 convention in Washington, DC.

The Israeli Communication Ministry's R R Sat provides transponder capability to the MEK to broadcast programming on its two channels. Iran-interlink.org even hints that Israeli Prime Minister Ariel Sharon personally approved funding for the broadcasts, because of his alliance with the MEK's influential Maryam Rajavi.

On May 28, the IFF's walk reached the White House. The closing rally featured Richard Perle, former assistant secretary of defense and prominent among the pro-Israel architects of Bush's Middle East policy. Corsi then phoned the White House, where Bush congratulated the marchers and offered support.

In response, *USA Today* reported that Iranian ambassador to the UN, Mohammad Javad Zarif, denounced these types of US measures as a violation of the Algiers Accords. The accords freed 52 American Embassy hostages in exchange for a US promise "not to intervene directly or indirectly, politically or militarily, in Iran's internal affairs". Iran may file a complaint with the International Court of Justice in the Hague to stop US interference. CP

Trish Schuh has worked with ABCnews, Al-Arabiya, Asia Times, Tehran Times, MehrNews, Syria Times, Iran News Daily and Muslim's Weekly.

The Duke Crash Lands

By JEFFREY ST. CLAIR

July 1, 2005, was not an auspicious day for the ultra-hawkish congressman Randy "Duke" Cunningham. FBI agents raided his palatial southern California home. With search warrants in hand they rummaged through the $2.55 million mansion, located in exclusive, costly Rancho Santa Fe, just north of San Diego. They were looking for evidence linking the eight-term Republican to Mitchell Wade, the founder and CEO of MZM, Incorporated, one of the Pentagon's top 100 contractors.

At the same moment that the FBI was delving through Cunningham's desk drawers, vaults and computers in California, other agents were executing a raid on the DC offices of MZM. Later that afternoon, FBI agents also rifled through a 42-foot yacht named the "Duke-Stir," docked on the Potomac River, where Cunningham resides, rent free, when he is in Washington DC.

The investigators were hunting for evidence that Cunningham, a former fighter pilot in Vietnam who claims to have been the inspiration for the Tom Cruise role in the movie *Top Gun*, may have accepted bribes from Wade in exchange for helping MZM land a bunch of defense and intelligence contracts from the federal government.

The corruption probe was prompted by the disclosure that in 2003 Wade had purchased the congressman's former four-bedroom house in San Diego for princely sum of $1.7 million. Wade soon put his new acquisition on the red-hot San Diego real estate market, where it sat unsold for almost a year. He finally unloaded it for $950,000.

During that same period of time, the average prices of houses sold in San Diego County climbed by more than 25 percent and rarely stayed on the market for more than a few weeks. Yet, Wade took a $750,000 bath on the Cunningham deal. The federal agents wanted to know why.

The Duke denied any wrongdoing and could offer no explanation for the mysterious and sudden nosedive in the value of his old house. "My whole life I've lived above board", Cunningham pleaded. "I've never even smoked a marijuana cigarette."

The Duke may not have treated his lungs with ganja, but he did attend one of the most notorious orgies in Pentagon history, the 1991 Tailhook Symposium in Las Vegas, the annual gathering of Navy flyers, Pentagon bigwigs, congressional kingpins, and defense contractors. Over the course of that September weekend at the Vegas Hilton, at least 83 women were stripped, forced to run a gauntlet of drunken, groping pilots, and sexually molested, with some being forced to "ride the butt rodeo", a Tailhook euphemism for having a pilot bite your buttocks until you can shake yourself free. One investigator blamed the Tailhook scandal on the "Top Gun mentality" of the pilots and their superiors. Bring back some memories, Duke?

One female Navy commander later speculated that part of the vicious timbre of the 1991 Tailhook orgy stemmed from the increasing hostility of the military and its backers to the increasing presence of women in positions traditionally the exclusive domain of men. "This was the woman that was making you, you know, change your ways," she said. "This was the woman that was threatening your livelihood. This was the woman that wanted to take your spot in that combat aircraft."

For years after the event, Cunningham referred to the "alleged misconduct" at Tailhook, claiming that the Navy fliers were merely engaging in a little benign steam venting. He has also tried to block efforts by Congress to curb sexual harassment in the military, rousing himself into passionate denunciations of such measures as "stinking of political correctness".

Cunningham claims that he had been trying to sell his San Diego house for some time. He said he told several people that his house was on the market, and one day out of the blue he got a call from Wade, who supposedly said, "Hey, I'll buy it!" The Duke said that the price of the house was established by a local real estate agency.

The problem is that the records don't back up Cunningham's tale of his sudden enrichment. The congressman's house was sold without the aid of a realtor,) and it was never put on the Multiple Listings Service database of homes for sale. Moreover, Cunningham did not record his munificent windfall on his annual financial disclosure form, which every member of congress must file.

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Duke Cunningham prefers to sleep not in the upscale community of Potomac, Maryland, but on the Potomac River itself in a yacht. Cunningham purchased the 65-foot riverboat named the Kelly C in 1997 from his pal Sonny Callahan, the former Republican congressman from Alabama, for $200,000. The flat-bottomed yacht, which is not deemed sea-worthy enough to venture out into the Chesapeake, never mind the Atlantic, only occasionally puttered up and down the river where observers on the Georgetown towpath could observe the former Navy aviator at the helm, dressed up, according to one longtime resident of M Street, like Admiral Halsey. Dockworkers at the Glen Cove Marina derided the Kelly C as merely a "big party barge".

In 2002, the Duke sold the Kelly C to a Long Island tycoon named Ted Kontogiannis for $600,000, snagging a cool $400,000 profit, even though the condition of the yacht had deteriorated to the point where the congressman himself had to pilot the boat to the shipyards of Consolidated Yachts to undergo a lengthy list of repairs. When the Duke dropped off the boat, he handed the owner of the shipyards an autographed glossy photo of himself adorned in his flight jacket.

For his part, Kontogiannis says the acquisition of the Kelly C was "a steal", although he has never taken the boat out of its slip and, in fact, never registered the sale of the boat with the Coast Guard, whose registry of ships still records the yacht as being owned by the congressman.

At the time Kontogiannis bought the Kelly C, he was experiencing what he calls "a little problem". In fact, Kontogiannis had just been convicted on kickback and bribery charges involving his role in a bid-rigging scheme over contracts with the New York public school system, and he was looking for a pardon from the Bush administration. Kontogiannis admits that he asked Duke Cunningham for help in finding a way to persuade Bush to expunge his conviction. According to Kontogiannis, the Duke put the convict into contact with a DC law firm and recommended the names of a couple of lawyers to press his case. Eventually, Kontogiannis said he declined to pursue the pardon because it involved "too much aggravation".

But the tycoon's favors for the Duke didn't end with the purchase of the congressman's party barge. Kontogiannis's daughter and nephew, who own a New York mortgage company, floated the congressman two loans totaling $1.1 million for the purchase of his Rancho Santa Fe mansion. Cunningham paid off one of the loans with the bloated proceeds from the sale of the Kelly C.

In the wake of the disposition of his riverboat, the Duke was not forced to seek cover in the Mitch Snyder Memorial Homeless Shelter. Instead, he made a pinpoint landing onto the deck of yet another yacht, named, coincidentally or not, the Duke-Stir and owned by none other than Mitchell Wade, CEO of MZN, Inc. Wade invited the congressman to live rent-free on the Duke-Stir. Since it's a crime for members of congress to live rent-free on someone else's property, Cunningham has evaded this troublesome legality by paying $13,000 a year in dock fees, far below the going rent in the more habitable quadrants of the Washington metro area.

Wade and his company also helped to finance Cunningham's political campaigns. According to records from the Center for Responsive Politics, MZM's political action committee donated $17,000 to Cunningham's coffers from 2000 through 2004. Wade personally twisted the arms of his employees to send donations for Cunningham. "By the spring of '02, Mitch was twisting employees' arms to donate to his MZM PAC," one former MZM employee told the *San Diego Union-Tribune*. "We were called in and told basically either donate to the MZM PAC or we would be fired."

"My whole life I've lived above board", Cunningham pleaded. "I've never even smoked a marijuana cigarette."

But what did Wade and his firm get in return for the largesse they've shown the Duke? MZM is one of those obscure enterprises started up by former Pentagon staffers and military officers to feed off the defense budget. Along with Wade, a former Pentagon staffer, all of the other corporate officers at MZM joined the company after successful careers in the military. MZM's vice-president Joseph Romano was the former head of the Defense Intelligence Agency's technological assessment group. Another MZM's vice president, James C. King, is a former Lt. General from the Army, who once headed the National Imagery and Mapping Agency. Yet another vice president, Wayne Hall, is a retired Army general who commanded a military intelligence unit during the 1991 Gulf War. The lone exception is Sue Hogan, MZM's vice president for governmental relations. In her former life, she served as a top staffer on the Senate Appropriations Committee's subcommittee on defense spending.

Unlike many such revolving-door operations, MZM struggled in its formative years, rarely pulling in more than $20 million in revenues in a single year. Then came 9/11, Bush's wars, and the fruitful relationship with the Duke. In 2002, thanks to a flood of Pentagon and CIA contracts, MZM's fortunes took a sudden turn for the better. By 2004, the small firm was hauling in more than $166 million in defense contracts a year.

What kind of contracts did the Duke help MZM obtain? The congressman took refuge behind a veil of secrecy. "They are very, very classified", Cunningham said.

The details of the MZM contracts remain obscure, but a review of the firm's annual report shows that the work ranges from digital mapping, recruitment of private intelligence operatives and interpreters to the production of psy-ops materials and "collections of foreign language vocal signals".

Cunningham discounts the allegation that he was doing any special favors for Wade or MZM. "The way it works here is, I support a lot of credible defense programs for the Air Force, Navy, ship building, ship repair or intelligence," Cunningham explained. " And they say, you know, 'Duke, these are good programs. This is what I want you to do.'"

Wade had a somewhat more succinct and instructive view of the impact of his political dispensations. According to a former MZM's employee, Wade explained that he focused his lobbying efforts on a handful of influential members of congress, and that he had bankrolled such as Cunningham because "The only people I want to work with are people I give checks to. I own them."

The remarkable aspect of the Cunningham affair is its essential banality. The casual dispensation of political graft is the rule in Washington and has been since the days of the robber barons. This is especially true when it comes to politicians, such as Cunningham, who are in a position to protect and advance the interests of the Pentagon's beefy portfolio of weap-

(**Duke** *continued on page 8)*

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(**SoundExchange** *continued from page 1)*

those accounts. The setup worked great. When you talked with them, they sounded bright and aggressive, upbeat and capable. They told everyone that things were working out great. There is just one problem. It isn't really working great.

Over time, SoundExchange established accounts for thousands of artists who never registered with them. While those accounts were for artists from all genres and eras, there were many from veterans who recorded thirty and forty and fifty years ago or more. I have a number of clients in that category, and many more I consider friends. Seeing that they get paid what they have earned has always been a major focus of mine. The money was just sitting there in those accounts, and SoundExchange had no clue whom to pay it to.

Eager to prove that it was no longer a puppet of the Recording Industry Association of America (RIAA), SoundExchange decided that it would make a concerted public effort to find those "missing" artists. I put "missing" in quotes because they really aren't missing; SoundExchange just didn't know where they were. SoundExchange still doesn't know where many of them are. Calling these artists "missing" sounds just like the justification given by the labels to NY Attorney General Elliot Spitzer when he discovered all those suspended royalty accounts last year. The labels couldn't find those "missing" artists, either. If you consider the organizational roots of SoundExchange within the RIAA (it was initially known as the RIAA Collective) and the fact that all the current SoundExchanges executives have RIAA backgrounds, it is only natural that SoundExchange should borrow heavily from the RIAA lexicon, in which "missing" means "we haven't bothered to look for them."

So what did the SoundExchange do as part of its big campaign to find artists?

There was a full-page ad in *Billboard*. The only people in the world who think an ad in *Billboard* is going to reach a substantial part of the population of recording artists, and especially those artists who stopped recording decades ago, are people who sell advertising at *Billboard* and, sadly, those who work at SoundExchange. Then there was a nice interview with John Simson on NPR about how hard they were looking for people. It's a great piece of PR, and I think you can still hear it on the NPR website. It's worth listening to because there is a segment that demonstrates just how SoundExchange carried out the campaign. We hear A SoundExchange employee telephoning an artist management company to see if they have contact information for a group the firm hasn't represented in over a decade. Of course, the firm didn't have the information. Ironically, a friend of a member of the band heard the NPR piece and let the members know that SoundExchange was looking for them, otherwise they would still probably not know. With this example as a template, all SoundExchange needs now is 30,000 more NPR interviews, each featuring a telephone call for a specific artist. There was also a nice piece on CBS Sunday Morning about how hard SoundExchange was looking for people, and there was something on Access Hollywood on the same theme.

SoundExchange has been very effective at getting the word out about how hard it works, looking for people. The real problem, however, is that they haven't found many of them. There are still tens of thousands of "missing" artists who don't know they're missing, or what they're missing. I know something about finding artists. Several years ago, I located approximately 225 artists from a list of over 300 that a major label said it couldn't find. Over a half million dollars was distributed as a result of my efforts. It took me about a month to find those 225. Because I wasn't compensated by the label for finding people and because I wouldn't take money from the artists I found, I had to limit my search to my free time, or I would have had results even faster than that. The tools I used were simply an Internet connection and an address book of people I had met over the years. I worked my network of artists, journalists, promoters, lawyers, and fans, and the contact information came rolling in. I passed on addresses to the label and the label sent out checks. For a good number of the people I located, the checks they received were the first royalty checks they had ever seen. Not one of those people was "missing." For every one of them, somebody knew where they were, and, at most, I was two "degrees of separation" away. It was fun to do, too. I am willing to bet that if SoundExchange asks, there are hundreds, if not thousands, of people like me who will locate those artists for free, just to be part of the process and see that people they admire receive, for once, the compensation they are owed.

I have a more serious problem with SoundExchange's "search" program because of my personal contact with it. I have seen it up close, and it stinks. In March 2004, I had a conversation with John Simson, SoundExchange's Executive Director. John knew of my amateur detective work and asked if I would assist SoundExchange in searching for artists. I told him that I would be happy to help. I sent John several emails over the next few weeks, asking when and how I could be of service. It took four months before anyone from SoundExchange contacted me. That delay had given me plenty of time to think about how I could be of assistance, and I told the representative what I thought I could do. I made two specific offers. First, I offered to find as many of the people as I could, using the same network that had served so well in the past. Second, I offered to help SoundExchange in its own search efforts. I explained that the people they were looking for were not going to see an ad placed in *Billboard*, and that inquiries within the current music business weren't likely to produce many leads either. They were going to have to look elsewhere, and to use other means to get people to listen. I had some good ideas where those efforts could be focused. I was thanked for my suggestions and told that they valued my involvement. They would get back in touch with me to get things started. No one called for eight months. When finally I did get a call, it was shortly after I had been quoted in newspapers as critical of the SoundExchange search efforts.

There are still tens of thousands of "missing" artists who don't know they were missing, or what they were missing.

In those eight months, I spoke with dozens of veteran artists. I asked each one if they were signed up with SoundExchange. Only a few had, and all of them had learned about SoundExchange on their own. SoundExchange hadn't found any of them. For the ones who didn't know about SoundExchange at all, I offered, for free, to help them get registered. Some took me up on my offer. I sent others the link to the SoundExchange website so they could register on their own. Then came the article that started a second round of conversations with the people at SoundExchange. In early 2005, I had a conversation with a newspaper re-

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porter who had received a SoundExchange press release saying that they were working hard looking for people, and that they had graciously extended the deadline for those missing artists to register. (More about this deadline stuff in a minute.) This journalist had been part of my old search network, so he figured I might be able to tell him something about what SoundExchange was doing to find people. I extolled the idea of SoundExchange to my friend, but I told him honestly that when it came to locating people, SoundExchange wasn't getting the job done. My public comments apparently got through. Shortly after the article appeared, I got that follow-up call from SoundExchange. It had been nearly eight months since I had last heard from them.

They still wanted my help, they insisted. I suggested they get me a list of the people they were looking for so I could get to work locating them. Now here comes the punch line. I couldn't have asked for a better explanation why SoundExchange wasn't finding people, and why their whole search campaign was as hollow as the press releases they sent out telling us how hard they were looking. I was told that SoundExchange would be happy to send me the list if I would sign a Nondisclosure Agreement (NDA). They wanted me to help them find people on the list, but I had to agree not to tell anyone who was on the list. Under the NDA, I couldn't contact people I knew and tell them that SoundExchange had money for them. Under the NDA, I couldn't contact people I knew and ask them for help in finding people on the list. Under the NDA, I couldn't post the list online where anyone could read it. SoundExchange says it wants to find these people, but it makes a list of their names proprietary information. This dumbfounded me at the time, and it still does.

Why is there an NDA on this list in the first place? I was told that the SoundExchange board was concerned that publicizing the list would bring out unscrupulous middlemen, who would locate the people on the list and register them with SoundExchange for a portion of the money in those accounts. The argument apparently is that the only way the board can be certain that artists get everything they're entitled to is to not tell anyone the money is there in the first place. This is absolutely mystifying, especially in light of what goes on at the SoundExchange website. Anyone with an email address can register to search the "Plays" database. That database includes information on every track that has been reported to SoundExchange and every artist that is entitled to be paid for the broadcast of that track. If you are an artist, you can type in your own name to see if they have money for you. That's great. You can also type in The Beatles, or Madonna, or Gwen Stefani, and "Plays" lets you know if those artists have tracks reported to SoundExchange that would result in money being placed in an account. I am pretty sure that those artists are getting paid, because they all have managers and accountants that look out for them.

"Plays" can also be used to identify artists for whom there is money but who – because of age or removal from the record business, and lack of professional advice – don't know it is there. As a test, I entered the name of four groups from the golden age of vocal groups: the Cleftones, the Harptones, the Monotones, and the Aquatones. "Plays" tells me that all four have SoundExchange accounts. I'll bet not all of them are registered with the organization. If I were one of those unscrupulous middlemen, I could cherry pick "Plays" for likely targets and then use my network of contacts to fish for new clients. I could bait the hook by telling them I found money for them, without telling them where it was. Because SoundExchange is keeping this information so close to its organizational vest, it is helping me out here. If my targets hire me, I can go get that money for them – for a percentage of the take, forever. If I get hold of enough of these artists, I can retire.

If SoundExchange truly believes that keeping secret the identity of artists with accounts prevents predators from taking unfair advantage of the artists, this scam wouldn't be possible. But it is, and strictly because of SoundExchange's decision to keep the "missing" artist list a secret, while allowing anyone to go through their database. The explanation SoundExchange gives doesn't stand scrutiny. What's the fastest way of making sure nobody actually plays this angle? The best disinfectant is still sunlight. First, put the list on the website where everyone can see it. It is certainly odd that an organization that claims it is dedicated to the idea of making the Internet a paying proposition for creative artists fails to use the Internet to help them get them paid. Publicize the full list of people you are looking for. Take out full-page ads in *USA Today*. Call the AARP and give them the story. Don't limit access to the information to only those who learn to run barefoot through the "Plays" database and use it as a shopping list. You would think this solution would be obvious, but apparently it has never occurred to anyone in the SoundExchange boardroom (if, of course, you believe they are serious when they offer that explanation).

So, who is actually served by an NDA on the list of artists SoundExchange can't find? Sadly, that seems obvious, too. The NDA protects the SoundExchange board and executives in charge of the search from public review of their lack of success. Here's an organization with a government-sanctioned monopoly on the "service" it is supposed to provide, and it is intentionally keeping people in the dark about money it is holding for them. It also protects some managers who haven't got their clients registered yet. It serves a purpose for the labels, too. If an artist finds out that a recording is being broadcast, and the source of that recording is some CD he knows nothing about, it might prompt the artist into calling the label to find out where the royalties are on the sale of that CD. God forbid the artists actually find out who is making money from their recordings! That kind of knowledge has always been considered a dangerous thing by the labels, so why should an RIAA satellite like SoundExchange think any differently?

If the labels had been successful in their efforts to have SoundExchange set up so that the artist money went through the labels first (where it could be recouped against debit balances in royalty accounts), you could be

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very sure there would have been a much greater effort to find those artists. There wouldn't be any impediment like an NDA. SoundExchange would be moving heaven and earth to locate artists so that their money could be paid over to the labels. Count on that.

I told John Simson in May of this year that I couldn't sign an NDA that would make me liable for damages if I disclosed the names on the list to any third party. He told me that I could modify the NDA so I could disclose 50 names. 50 out of 30,000.

I declined. I wasn't in any position to decide who gets to find out there's money for them at SoundExchange and who gets to remain in the dark. I wanted no part in that sort of game. I also told Simson that I intended to go public with the information I had, including the request for the NDA. He said he would ask his board for approval to release the list publicly, and he asked for four weeks to make this happen.

That deadline has long gone, with no call from SoundExchange. I did get a SoundExchange press release in my email this week proudly announcing they were extending the deadline for artists to sign up until December 31.

Beyond that, if SoundExchange's high command finally decides it has waited long enough for these artists to come forward, what do you think happens to the money in those unclaimed accounts on January 1, 2006? It goes into the general SoundExchange budget to cover operational expenses.

Wherever that money ends up, the people who actually earned it won't get a dime, because the organization that was granted the exclusive franchise on collecting the money for them says it can't find them.

One more thing. There's no interest accruing in favor of the artists on those accounts, either. Sound Exchange gets to keep that now, even if the artists find SoundExchange on their own. It's win-win for the folks at SoundExchange. They have nothing to lose by NOT actually looking for people where they might find them. If you needed any further proof that the RIAA mindset controls SoundExchange, this is it. The prospect of watching artists' money flushed into the general funds at SoundExchange raises some other questions about the way business is conducted there.

Has anyone ever seen SoundExchange's annual budget? Or a SoundExchange's financial statement? Does anyone know what the executives are actually being paid? Anyone know how the license revenue is actually divided up among the recipients? One of the side benefits to being the only game in town, like SoundExchange, is its executives really don't have to answer these questions. No one can force them to answer.

So, is anyone still keen on SoundExchange having a bigger role in the collection and distribution of license fees?

Do we really need another mechanism built on the backs of creative people that compensates someone else at their expense? CP

(**The Duke** *continued from page 5)*

ons contractors.

What political power he enjoyed came courtesy of the economic geography of his southern California district, which harbors a thicket of defense industry giants, from TRW and SAIC to Northrup Grumman and Titan, and military bases. Cunningham was a company man, and DC is a new kind of company town. His guardianship of those weapons firms secured Cunningham a seat on the Defense Appropriations Subcommittee, one of the most powerful enclaves on the Hill. With that seat, Cunningham became a mini-potentate in Congress, and dozens of defense contractors made the annual haj to his office to lay riches at his feet and requests on his desk.

Cunningham was just an interchangeable part, a legislative errand boy, fetching home parcels of contracts every fall when the appropriations bills come due. No special talent was required. Almost anyone could do it. But it's fine to live on the dole of a defense company; just don't press the point by reposing for free on their yacht. That's the kind of exposure that might spoil the game for everyone.

It certainly spoiled it for Cunningham. In mid-July the congressman suddenly announced his retirement, saying he had decided to "conclude the public chapter of my life" and not seek re-election to a ninth term. But he's expendable. The Pentagon and its contractors and numberless parasites have many available to shoulder the Duke's duties. CP

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